Submission by

to the

Ministry for the Environment (MfE)

on the

Consultation on Updating RMA National Direction

July 2025

CONSULTATION ON UPDATING RMA NATIONAL DIRECTION
SUBMISSION BY BUSINESSNZ[1]

1.0 EXECUTIVE SUMMARY

1.1 BusinessNZ welcomes the opportunity to make a submission on Consultation on Updating RMA National Direction.

1.2 National direction plays a crucial role in supporting councils as they develop and implement local plans and rules. It is widely accepted that there is a need to change many National Policy Statements (NPSs) to ensure they are fit for purpose to improve infrastructure planning and delivery, enable development and unlock growth in the primary sector.

1.3 BusinessNZ notes that in order to achieve this, the Government proposes 16 new or amended national direction instruments. While each national direction proposal is independent, they have been grouped to reflect related themes: Package 1 – Infrastructure and Development, Package 2 – Primary Sector, Package 3 – Freshwater, and Package 4 – Going for Housing Growth.

1.4 BusinessNZ notes that the Government is committed to further reforms of Resource Management later this Parliamentary term, with new resource management laws ("Phase 3") based on the guiding principle of the enjoyment of property rights. BusinessNZ supports this approach but accepts that it is desirable to remove unnecessary roadblocks to growth in the meantime.

1.5 It is particularly important, when assessing the merits or otherwise of the wide array of proposals, that they are consistent with intended proposals surrounding Phase 3 reforms, i.e. that they are based on the principle of upholding property rights.

1.6 While BusinessNZ broadly supports the general thrust of the proposals outlined above, there are a few specific issues and concerns which BusinessNZ wishes to comment on in further detail. These are outlined in the following section.

1.7 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on in some depth. We have therefore encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.

[1] Background information on BusinessNZ is attached as Appendix 1.

2.0 SECTION 1: Specific Comments on the Proposals

Package 1: Infrastructure and Development

2.1 BusinessNZ notes that this package aims to make it easier for councils to plan and deliver infrastructure. The proposed changes are targeted and would be quick to implement, with minimal disruption for councils and the infrastructure sector.

2.2 The Government aims to make it easier for councils to plan and deliver infrastructure by making four new national direction instruments (for infrastructure, granny flats (minor residential units), papakāinga, and natural hazards) and amending four existing national direction instruments (for renewable electricity generation, electricity transmission, distribution and associated activities, and telecommunications facilities).

Section 2:

Part 2.1: National Policy Statement for Infrastructure (NPS-I)

2.3 BusinessNZ considers that the NPS-I is a vital and long-overdue step toward a more enabling, consistent planning framework that properly recognises the role of infrastructure in enhancing NZ's productivity and hence economic growth over time.

2.4 BusinessNZ broadly endorses the proposed NPS for Infrastructure and agrees that the problem the NPS is aimed at addressing, as outlined on p.11, is highly pertinent:

> *"The current resource management system and national direction does not sufficiently recognise the benefits of infrastructure, or the role of infrastructure services in supporting the wellbeing, health and safety of people and communities, now and in the future. This means New Zealand's infrastructure expenditure is inefficient, and community needs for infrastructure services are unmet.*
>
> *The existing resource management plans and other documents that guide decision-making often underplay the benefits of infrastructure, relative to its local adverse environmental effects. In addition, decision-making on infrastructure across the country is inconsistent." (p.11)*

2.5 Many of our major infrastructure providers experience many of the challenges the NPS-I seeks to address - particularly in relation to reverse sensitivity, inconsistent local policy frameworks, and lack of recognition for well-consulted and evaluated future investment plans. We therefore strongly support the intent and direction of the NPS-I and see it as a gamechanger for infrastructure planning and delivery in New Zealand.

2.6 In particular, we support:

- Requiring planning decisions to "recognise and provide for" the benefits of infrastructure;
- Strengthening the management of reverse sensitivity and land use conflicts;
- Recognising functional and operational needs, including location-specific siting;
- Enabling timely upgrades, including minor works that currently face disproportionate consenting burdens.

2.7 While BusinessNZ is broadly supportive of the proposed NPS for Infrastructure, it wishes to stress the importance of ensuring that the definition of infrastructure is very broad, to include *infrastructure-supporting activities*, and not just the infrastructure itself. This is fundamental to ensure efficient delivery of services required and appears to be covered to some extent on p.13.

2.8 Secondly, BusinessNZ considers that the importance of infrastructure in raising NZ's low rates of capital, labour and multi-factor productivity, ideally needs to be inserted within the NPS.

2.9 Thirdly, reference should also be made to linking the NPS-I to the National Infrastructure Plan by the Infrastructure Commission which provides a pipeline of infrastructure projects for decades to come.

2.10 To fully unlock the benefit of the NPS-I, Phase 3 of the resource management reform programme must embed complementary legislative and institutional settings. These should:

- Define and elevate the concept of reverse sensitivity;
- Clarify terms like "where practicable" to improve consistency and ensure the system remains enabling;
- Standardise compatible land use frameworks and interface tools;
- Require councils to give effect to national direction in a timely and consistent manner.

2.11 Reverse sensitivity refers to situations where new or intensified sensitive activities (e.g. housing, schools, healthcare facilities) are introduced near existing infrastructure, and subsequently generate complaints or seek to curtail that infrastructure's operation. Importantly, the infrastructure itself may not have changed, but its operation is now constrained by the expectations or vulnerability of the nearby activity. This effect:

- Arises from the changing land use context, not the infrastructure;
- Is a key driver of operational risk, legal challenge, and costly retrofit requirements;
- Undermines long-term infrastructure efficiency, safety, and investment certainty.

2.12 We are therefore encouraged by the NPS-I's explicit recognition of reverse sensitivity as a legitimate and material planning concern, and its promotion of spatial tools to manage such risks. This provides a much-needed bridge between infrastructure needs and land use planning responsibilities.

2.13 However, we remain concerned about the use of the qualifier "where practicable" in several policies, including in the context of avoiding adverse effects or implementing buffers. While intended to provide flexibility, this phrase has been shown in practice to introduce legal uncertainty and inconsistent application across councils. It is likely to become a point of dispute during hearings and appeals, and could undermine the weight of national direction by deferring discretion back to local authorities.

Part 2.2: National Policy Statement for Renewable Electricity Generation (NPS-REG)

2.14 BusinessNZ supports updating the NPS for renewable electricity generation and acknowledges that the Government understands that to build, maintain and upgrade our electricity system to help meet our emissions targets, requires a faster, cheaper, and more certain consenting regime.

2.15 However, BusinessNZ stresses the need for a truly streamlined resource management regime, not just for matters involving renewable electricity generation (and transmission), but for other renewable and thermal energy projects. For this to occur, the regime must be agnostic, uphold the fundamentals of property rights, establish a framework that practically allows for remediation and mitigation, thoughtfully considers trade-offs, grandparents existing rights and embeds a strong costs and benefits test.

Part 2.5: National Environmental Standards for Telecommunication Facilities (NES-TF)

2.16 BusinessNZ supports the updating of the National Environmental Standards for Telecommunications Facilities (NES-TF).

2.17 NES-TF contains the standards that allow our members to do routine infrastructure installs and upgrades without costly resource consents. The NES-TF is significantly out of date and will cost the sector (and ultimately consumers) millions of dollars in obtaining consents, unless it is updated to reflect modern reality of telecommunications needs and systems.

2.18 Given the above, the proposed updates to the NES-TF are supported as the proposed updates will enable the telecommunications sector to make network upgrades and resilience improvements benefiting communities and businesses. However, we note that some changes to what is proposed are needed to enable telco infrastructure to keep up with changes in the built environment and technology standards. In this respect we understand the New Zealand Telecommunications Forum is submitting on these more detailed points.

2.19 The issue of pole height is especially important to ensuring businesses and communities can communicate. Changes to the built environment allowing for taller buildings mean that telecommunications facilities need corresponding height increases to enable mobile signals to get through. We therefore support increasing the permitted heights for telecommunications poles. With proposals in the housing package looking at even taller buildings around transport hubs, we think the NES-TF needs to be future proofed, enabling pole height that is building height plus 5 metres (a variation on option 2 for changing regulations 27(5) and 29(4) on pole height rules).

Part 3.3: National Policy Statement for Natural Hazards (NPS-NH)

Natural Hazards

2.20 BusinessNZ notes that the key elements for the proposed National Policy Statement for Natural Hazards (NPS-NH), are that local authorities must:

- take a risk-based approach to natural hazard risk, including the introduction of a risk matrix;
- take a proportionate approach to natural hazard risk; and
- use the best available information in assessing natural hazard risk.

2.21 While BusinessNZ is supportive in principle of taking a risk-based approach to hazard management, for government involvement to be justified, the externalities must be shown to be particularly large.

2.22 A fundamental principle on which a market economy such as NZ is based is that property owners, including businesses, have relative security in their property rights, with the right to use their property in the manner they choose (while respecting the rights of other property owners).

2.23 Investors too must have confidence that any assets they purchase or improve on will be safe from confiscation and unreasonable restrictions, or alternatively, that the investor will be compensated for any erosion of property rights. If this is not the case, then there will be limited incentives for anyone to undertake long-term investment.

2.24 Given that markets are generally faster at self-correcting than government intervention, the onus of proof must be on government and councils to prove beyond reasonable doubt that the benefits of intervention exceed the costs, including the unintended costs of regulation, such as non-compliance.

2.25 A danger is that regulators will minimise their own risks, bringing scant certainty that the rules won't be changed down the track and at relatively short notice, disincentivising investment in building activity.

2.26 BusinessNZ considers that it is important that *significant* natural hazard risk is defined - currently it is not, which could lead to the taking of property or regulatory takings in the public interest without any form of compensation.

2.27 As a general principle, individuals and companies should bear the full cost of their behaviour, i.e., costs should be internalised. Overconsumption of resources is always likely if costs can be shifted onto third parties. Management of land use and risk is no different. If individuals and companies are to make rational decisions about land use, they should ideally bear the costs and gain the benefits associated with specific options or outcomes. If on the other hand individuals and companies are forced to pay a greater amount than any cost they bring into effect, the outcome will either be a more expensive product and/or reduced commercial activity, with associated flow-on implications for employment etc.

2.28 It is important to understand upfront that there is an optimal amount of resources which should be utilised in reducing risk arising from natural hazards, just as there is an optimal amount of resources that should be spent on crime prevention, health interventions etc. The crucial and undeniable fact is that resources are limited, while risk often cannot be completely eliminated, not least without great cost. It might be possible to reduce risk, but beyond a certain point the marginal cost of acting becomes progressively higher, while the potential returns reduce. Therefore, it pays for companies and individuals to invest in risk minimisation strategies only up to the point at which the marginal cost of taking action equals the marginal benefit.

2.29 Also, it needs to be clearly pointed out that the proposed NPS-NH will need to fit within the ambit of the phase 3 reforms where the Government has been clear that it will be based on the enjoyment of property rights where landowners will be free to undertake activity on their land provided that externalities on third parties are adequately managed. This would suggest that greater discretion should be provided to landowners to make commercial decisions based on their personal assessment of risk, given that they are essentially putting their capital on the line and therefore should have a better understanding of the risks and returns from investment in particular areas than council planners per se.

Package 2: Primary Sector

2.30 The Government aims to enable growth in the primary sector by making changes to eight national direction instruments (for marine aquaculture, commercial forestry, highly productive land, stock exclusion regulations, NZ Coastal Policy Statement and the quarrying and mining provisions in national direction for freshwater, indigenous biodiversity and highly productive land).

Part 2.4: National Policy Statement for Highly Productive Land (NPS-HPL)

2.31 It is noted that the National Policy Statement for Highly Productive Land (NPS-HPL) came into effect in October 2022, to protect highly productive land for use in land-based primary production, now and for future generations.

2.32 Concerns have been raised about the impact the NPS-HPL has on making land available for urban development. Specifically, there are concerns that the inclusion of LUC 3 land in the NPS-HPL may overly restrict the supply of greenfield land, which may be suited for housing, in some parts of NZ.

2.33 The proposal is to amend the NPS-HPL to provide more opportunities for urban development while retaining the most agriculturally productive land for primary production. It involves, principally, removing LUC 3 land from the NPS-HPL restrictions with immediate effect but maintaining NPS-HPL restrictions on LUC 1 and 2 land.

2.34 Urban expansion naturally occurs on the fringes of cities, which often overlaps with the HPL. If the designations of HPL are used to freeze development irrespective of housing need or infrastructure efficiency, the cost of housing will rise.

2.35 While BusinessNZ considers the proposed amendments to the NPL-HPL to be an improvement on the status quo, BusinessNZ does not see the need for a specific NPS-HPL per se. Moreover, we consider that the continuation of this NPS-HPL directly contradicts the Government proposals in respect to Phase 3 Reform, where the enjoyment of property rights is a central feature whereby landowners are free to undertake an activity on their property, provided they do not substantially interfere with the rights of others to enjoy their own property.

2.36 A system based on property rights would allow landowners to determine the best use of highly productive land. However, the regulation of highly productive land is not based on external effects on the environment, but rather on a regulator's view that land is better used for one purpose over another.

2.37 BusinessNZ notes that the Expert Advisory Group (EAG) outlined in their report some issues regarding the NPS-HPL, including that there was not universal support for its continuation.

2.38 Paul Melville, in *Blueprint for RM Reform – Minority Report* (March 2025) raised valid concerns about the continuation of an NPS-HPL which BusinessNZ concurs with:

> *"Highly productive land is protected under the RMA with the objective of keeping this land in primary production. The 'problem definition' and evidence base for why regulation is needed to keep land in primary production isn't clear.*
>
> *The Cabinet Paper states, "The resource management system should not attempt to specify or direct development outcomes that are better determined by landowners and developers themselves in response to demand." Deciding whether land should be used for housing, vegetables, other forms of primary production, solar farms, or even a use such as recreation (horses), or retired from use altogether (biodiversity covenant), is a clear example where outcomes are better determined by private individuals in response to demand.*
>
> *Allowing the system to specify what land is used for to achieve goals related to economic growth or food production risks broadening the scope of the system beyond managing material adverse effects and into a space of achieving broader policy goals.*
>
> *Such a system could allow for many of the regulations that have occurred under the RMA and that Cabinet wants to prevent. I recommend that protecting land based on its productive capacity is beyond the scope of either act."*

Part 2.5: Multiple instruments for quarrying and mining provisions

2.39 BusinessNZ accepts that there is a need to unlock development capacity for housing and business growth and that to achieve this objective, locally sourced aggregate and minerals are needed.

2.40 Quarrying and mineral extraction are essential to infrastructure, housing and industry generally. The current planning regime often treats extraction as an undesirable activity rather than an essential resource, thus resulting in the need to transport aggregate over long distances or disallows mining operations which provide valuable minerals as well as regional economic activity. Enabling cost-effective extraction is in the public interest and therefore enabling national direction instruments to support improved supply is to be commended.

2.41 It is likely that the proposals may increase access to local aggregate and other mineral resources needed for housing and critical infrastructure projects and will inevitably result in an increase in mines and quarries.

2.42 It is important in respect to mining and quarrying, that ancillary activities essential to these operations, such as building access roads and other infrastructure, can be readily developed to ensure efficient operation.

2.43 Moreover, BusinessNZ considers that no distinction is needed between the different types of minerals found, or mines and quarries operating, as the extractive sector's effect on the environment does not depend on the type of mineral extracted.

2.44 BusinessNZ considers that the regulations should be about addressing activities' effects, not about the activities themselves. Other policies already in place, including the Emissions Trading Scheme (ETS), focus on greenhouse gas emissions and, as BusinessNZ has commented in recent submissions, it is the ETS that should be the primary means of encouraging emissions reductions, at least cost, without unnecessary controls on what can be mined.[2]

Operational or functional need

2.45 BusinessNZ supports proposed changes to clause 3.22(1)(e)(iii) of the NPS-FM adding 'operational need' so it reads *"there is a functional need or operational need for the activity to be done in that location."*

2.46 We agree with the document that this change is needed to make it consistent with the NPS-IB and NPS-HPL which provide for a functional need or operational need. It is also an important amendment in itself as it addresses the locational constraints of extractive activities, alongside other sector activities as well.

2.47 "Operational need" is defined in the National Planning Standard definitions as meaning: *"the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints".*

2.48 The term is included in the National Planning Standards to cover situations where there are valid reasons why an activity should be enabled to occur in a particular location, for example there might be an operational need for a processing site to be located close to the mine, or an access road to provide access.

2.49 Because of the locational constraints of extractive activities, there are no alternative locations for either the extraction or ancillary activities.

Package 3: Freshwater

[2] See for example, BusinessNZ Submission to the Environment Select Committee on the Natural and Built Environments Bill (August 2021):

"Provided emissions are adequately covered by the ETS, authorities should be agnostic as to which specific projects should be supported. Therefore, when it comes to meeting domestic and international obligations to reach net zero carbon emissions by 2050, we consider the focus should be on:

1. *Net emissions and not gross emissions*
2. *The ETS as the sole tool except where it can be clearly demonstrated that further interventions will have net benefits*
3. *Any supporting policies are outcome-focused and technology agnostic*
4. *Avoiding bans and interventions as typically these increase cost for no gain, given the ETS cap*
5. *The importance of lowest cost abatement as cost matters to the wellbeing and livelihood of New Zealand families and businesses."*

2.50 The Government is seeking feedback on options to amend freshwater direction to better reflect the interests of all water users, and on whether changes should be implemented under the RMA or new resource management legislation.

2.51 BusinessNZ formerly produced a background paper on issues surrounding water management: *Water Management – Issues and Solutions (*BusinessNZ 2010). While the paper covered a number of issues, including options for water allocation regimes, it outlined the *principles of a good water management regime* which included:

- Assessing water catchments
- Security of tenure and clear specification
- Grandparenting existing rights
- Compensation for loss of property rights
- Reasonable internalisation of costs
- Efficient transferability of water rights

2.52 The relevant section is quoted below, given these issues are important in assessing what a future NPS-FM should include:

> *"A sound water policy regime should ultimately ensure that current and future generations gain the greatest economic, social, environmental and cultural benefits associated with water use within a sustainable management framework. From a business perspective this means that scarce resources allocated to productive uses are used efficiently, thereby flowing to their most highly valued uses. For this to occur, a number of considerations are involved, including security of property rights, reasonable internalisation of costs associated with water use (user pays), and the ability to efficiently transfer rights where appropriate. Such considerations are often given little or no account under current water management regimes; they must therefore be part of any water reform agenda.*
>
> ***Assessing water catchments***
>
> *Obviously, for water allocation purposes, the amount of water available for allocation must be clearly understood. If available water resources are not adequately understood hydrologically and scientifically, they may either be under-utilised, at a time when they have many potentially beneficial uses, or over-allocated, thereby threatening the long-term sustainability of the resource. Many Regional Councils have been relatively tardy in requiring metering of water use, perhaps surprisingly given the continued pressure on water use in particular regions.*
>
> *Developing catchment plans and allocation limits through thorough consultation and appropriate scientific modelling is a pre-requisite to ensure an effective framework for establishing tradeable water rights. In fact, it is essential for fostering efficient markets.*
>
> *There is the potential for debate about who should fund the above activity. Some suggest it is local government's role to collect the base information, assuming broader community benefits. Others go so far as to suggest a role for central government which could help to fund the information gathering process. Information gathering is an expensive activity and possibly beyond the means of some councils.*
>
> *However, most people recognise it that there is a need for a user (beneficiary) to invest in information at an individual level, although there is debate about the extent to which any benefits have the characteristics of a private rather than a public good. Obviously, water metering is a prerequisite to better quantifying water use and providing base information. Issues of payment for information and who should pay are covered later*

in this paper. Such issues are of real concern, particularly in areas where water demand has increased substantially and where information on known water resources is relatively scarce.

Security of tenure and clear specification

Property rights and enforcement of same are a fundamental pillar of a market economy. Without reasonable security from confiscation by the state or others, the incentive on individuals and business to invest and build up productive assets is severely weakened.

There is still much debate about property right boundaries. At one extreme, property rights can generally be considered reasonably clear, for example, a private title over land and buildings. At another level property rights can be assigned by government - resources such as fishing quotas, for example. Here property rights are generally reasonably secure or, if reductions in take are made (e.g. because of over-fishing), current quota holders have reasonable certainty that their proportion of the total take remains the same. At the other extreme, government, or its delegated authorities, give rights to particular people to do certain things or use particular resources, but with significant restrictions. For example, water permits are issued to users for periods of up to 35 years (but often for much shorter periods) but with authorities able to modify/change those permits during their tenure if new information comes to hand. The point here is that while some property rights are relatively certain and enduring, others are not.

For water allocation in New Zealand, resource consent (a water permit) is generally required. However, the RMA states in Section 122 that resource consent "is neither real nor personal property." Therefore, some might argue whether resource consent to take water (a permit) is indeed a property right.

While clearly a water user does not have the right to ownership of the actual water resource, resource consents do give the user the right to take, dam or divert water. In this regard, a resource consent is a property right. Moreover, water permits are recognised and valued as rights, particularly where there is an increasing demand for water. Therefore, semantics aside, water consents are water rights, as reflected in the large infrastructure investments undertaken in New Zealand - electricity generation, large scale irrigation schemes, manufacturing, processing and mining etc. In many cases the value of consents for agricultural irrigation has been capitalised into land values.

Clearly investors would not invest in such schemes if they considered their rights to future water would be unduly jeopardised. However, it is certainly the case that some investments have been delayed or simply abandoned because of uncertainty over existing and future water property rights. To secure future investment in water infrastructure, current property rights to water need to be enhanced to ensure greater certainty of future use.

Regardless of which water allocation mechanism is adopted, individuals need a high degree of certainty that their right to take water will not be unduly jeopardised, restricted or taken away without their agreement.

*The requirement is for **(i) Security of Property Rights** and **(ii) Clear Specification** of water use.*

***(i) Security of Property Rights**: a water right is provided in perpetuity ensuring confident investment but with the ability to trade in such rights where appropriate.*

***(ii) Clear specification**: any constraints on water use are well defined, publicly known, and not subject to arbitrary change e.g. any risk-sharing arrangements are clearly defined.*

Notwithstanding the above, it is important to appreciate that supply of water cannot necessarily be guaranteed in each catchment all of the time due to extraordinary circumstances beyond the control of consenting authorities e.g. unforeseen extreme weather events which may adversely impact on water supply for a time.

This means that it may be necessary in extreme circumstances for water takes to be reduced for a period of time. In most situations, percentage reductions across users would generally be the fairest mechanism to deal with such events. However, these issues clearly need to be addressed in any consent issued so users are clear as to their rights and responsibilities and the relative value attached to their consent.

In catchments where demand for water is relatively high and significant uncertainty of supply occurs, it may be desirable for authorities to issue "A" and "B" (or even "C") grade water use rights where "A" grade rights almost certainly guarantee supply through to "C" grade use rights which may be used when "A" and "B" grade users have taken their allocation and significant water remains which can be used without adversely impacting on current takes or the environment. Obviously, the value attached to "A" grade rights is likely to be greater given the greater certainty of supply.

Grandparenting existing rights

It can be strongly argued that the initial allocation of water rights within a tradeable rights framework should be based on historical allocations and/or usage. This would provide for the protection of existing investments and would be consistent with the approach taken towards the allocation of other resource use rights such as the ITQs in respect to fisheries (see Appendix 1).

The initial allocation of water rights based on historical usage means that there are potentially rents that can be captured by the holder of those rights, although the value which can be captured will depend on a number of factors, including the relative scarcity of water in a particular catchment area. For example, in catchments where water is relatively plentiful, it can be easily captured for use, and where demand does not outstrip supply, the value of water may be quite low. However, this is not necessarily the case in regions where constraints on allocatable water mean that demand can far outstrip supply (i.e. where water is fully or over-allocated) within a catchment.

Obviously, an initially free allocation of water based on historical use may mean that a user can later on-sell the right and make a considerable profit, assuming of course that the demand for water increases over time within the catchment where the right has been allocated.

While the capture of such rents may be politically contentious, this does not lessen the importance of ensuring that existing investments are protected.

An alternative to grandparenting rights would be to re-allocate them (when the term of the current permit expires) based on a number of possible approaches such as auctioning the rights. However, auctioning existing allocated rights to water would seriously undermine the protection of existing rights and the value of what in some cases would be significant sunk cost investments.

Businesses would have limited incentive to invest in expensive irrigation equipment and land development, or electricity generation if they had a strictly limited time frame in which to use water and no reasonable guarantee that their right to access the water would be renewed. It is fair to say that most individuals investing in irrigation systems and hydro-electricity generation have built their developments on the expectation of their consents being renewed. As mentioned previously, often the value of water consents is capitalised into land values.

If it became evident that permits to take water were simply being transferred to other users when they expired, all existing water users would have their legitimate expectations of continuing water property rights eroded. This would constitute the Crown making spontaneous and ad hoc decisions about the developments it would promote and would drive at the heart of established property rights, seriously undermining the ability of many businesses to continue operating. This is particularly so given the high sunk costs of investment in the land development which accompanies irrigation conversion or on a more significant scale, electricity generation. It is therefore fundamental that existing rights be maintained and enhanced to encourage investment in assets which utilise water as a significant input.

Allocating tradeable rights on the basis of historical usage is fundamentally important to ensuring that the value of current investment is protected. In respect to any non-allocated rights, a range of possible allocation mechanisms is possible. Section three provides details on some possible allocation mechanisms.

Compensation for loss of property rights

While it can be argued that property rights to water should be allocated based on current rights/use with any water left over allocated for example, through auctioning or other means, this does not deal with the potential problem which currently exists in some areas where water has arguably been over-allocated so that some water allocations need to be taken out of use (or the users bought out).

While the issue of over-allocation has generally not been significant for most catchments in New Zealand, a number of catchments are considered to be fully allocated, or indeed over-allocated in some cases. This may make it necessary to determine how water use can be reduced without unnecessarily interfering with the property rights of existing users.

Examples from other jurisdictions with respect to the loss of water property rights may serve as an indication of the range of options available in cases of over- allocation. In Australia, for example, in cases where water has been over-allocated with significant environmental implications, some voluntary cost sharing arrangements have been developed between users (generally farmers) and Federal and State Governments.

While farmers have sacrificed a share of their current allocated take (which is, in effect, a cost to them), Federal and State Governments have purchased permits on the open market and have thus minimised the cost to both farmers and taxpayers. This could be an effective approach to compensation for the loss of water property rights in New Zealand as well. Under the approach, those who value their allocation the least would likely be inclined to sell a portion of it. In addition, the costs to the state of obtaining such permits would likely be lower than the cost of compensating all users. This would be less intrusive than a mandatory across the board reduction for all users.

It is important to differentiate between over-allocation because of a temporary weather event and what could be described as structural or long-term overallocations.

As mentioned earlier there will be situations from time to time in which water users cannot use all of their permitted takes because of an adverse weather or related event. It is suggested that such reductions in take be based generally on a proportion of the total take for the catchment area. However, where permanent reductions are required due to inappropriate planning by the consenting authority then the user should arguably be compensated for any permanent loss of take.

The issue of compensation is particularly complex in cases where the amount of water used by an individual is significantly less than the amount he or she has been allocated. Trying to differentiate between actual water used and the amount allocated to individuals in order to determine the financial impact of taking a portion of an individual's permitted allocation could be a time-consuming and difficult task. Arguably, compensation should be provided to both current water users and also those holding rights to unused water, given both have valuable property rights.

Some have suggested that where consents allow for a greater amount of water take then necessarily used then some form of reasonable use, best practice or historical use test should apply. This is the case in Queensland, Australia, where to prevent windfall gains from people who have never used their water entitlements, legislation prohibits the selling of water, unless a history of use can be proved. While on the surface this sounds perhaps a considered approach, when one looks at the implications on users, it could have significant ramifications.

Based on historical use, if a farmer had only recently moved to install irrigation and had had a few particularly wet summers, then based on historical use, his/her new allocation might be relatively low.

A 'reasonable' use or best practice test may or may not reflect the investment a user has put into their productive assets. For example, would a best practice test reflect the assets currently being used or the most modern and sophisticated available which could have significant implications for the property rights of current water users?

Notwithstanding the above, some users who have been allocated water rights far in excess of what they require or are likely to need may be prepared to voluntarily reduce their allocated takes with or without compensation. In some cases, it is possible that consent holders may be prepared to reduce their total allowable take provided that they are given more certainty and security over the minimum amount they are allowed to take. In this case it may be possible in many circumstances for a "win-win" situation rather than any significant loss. In some catchments each case may need to be addressed on its merits taking a range of factors into consideration. Obviously voluntary (but enforceable) agreements between the parties is the ideal outcome rather enforced outcomes wherever possible.

Reasonable internalisation of costs

While it has been argued earlier that current rights should be ideally grandparented, new allocations need to reflect the implications of resource use to encourage efficient investment decisions.

As a general principle, individuals and companies should bear the full costs associated with their behaviour (i.e. costs should be internalised) or individuals will over-consume resources if they can shift costs on to third parties. Management of water, and perhaps more importantly, water quality, is no different in this respect. In order for individuals to make rational decisions about water use, they should ideally bear the costs (and benefits) associated with specific water use options.

Efficient transferability of water rights

While the RMA technically allows water taking permits to be transferred amongst users in the same catchment area under certain conditions (section 136), and while some transfers do occur, the practice is not widespread. There are likely to be a number of reasons for this, including the following:

- *Water permits attach to individual consent holders. A water permit granted to dam or divert water may only be transferred to a new owner or occupier of the site in respect to which the permit is granted.*

- *Water permits to take or use water can be transferred, in whole or in part, to another person on another site, if both sites are in the same catchment or aquifer. However, a requirement for transfer is that the transfer must be expressly allowed in the regional plan or the transfer must be approved by the consent authority. Not all regional councils expressly permit transfers in their regional plans and approval processes can be administratively burdensome.*

- *In many catchments, water has not been fully allocated, and a new consent will likely be less expensive than one purchased from an existing user.*

- *Because a right to take water is often reflected in land values, a permit to take water can be a valuable asset and worth retaining.*

- *Farmers whose property has been developed for irrigation are unlikely to want to return to dry land farming.*

- *Presently users who have historically been allocated too much water are more likely to have their use cut back via a reasonable use test (or use it or lose it) than to be afforded the opportunity to sell or trade excess water rights on the open market.*

- *In many cases it may be impractical to "move" surface or "run of the river" water to a neighbouring property.*

Notwithstanding the above, the ability to transfer (or trade) the right to take water can be considered a fundamental objective in ensuring an efficient allocation of resources over the longer term. In other words, those who value the water most will generally be happy to purchase rights to use it, and those who value the water less will generally be happy to sell or lease any rights to it they may have. Such a market can only exist in an environment where water rights are certain and secure.

An efficiently functioning transfer system is also beneficial in reducing the potential for conflict between existing and potential water users by facilitating trade in water to its most valuable uses over time.

In many respects the initial method of allocating water may not be so important provided that users have the ability to move water to higher valued use over time through transfer/trading options.

To ensure public confidence in a market system, a number of conditions must be present:

a. The amount of water available for allocation needs to be clearly determined.

b. Individuals and companies need to ensure they have secure tenure and clear specification of water rights so that existing users and potential users are certain those rights exist.

c. A central registry of available water rights and permit holders is required, including mechanisms for recording transactions via a water trading registry.

d. Monitoring of water use is required to ensure that individuals and companies only take what they were entitled to. Enforcement will also be necessary.

A properly functioning market would make it possible to transfer water to its most highly valued uses (either through short or long-term lease arrangements, or sale).

In a number of jurisdictions throughout the world, markets have been established to facilitate the distribution of water rights.

Tradeable rights are not a unique concept in respect to water but have also been successfully implemented for a number of scarce resources with the objective of ensuring efficient allocation e.g. commercial fisheries management. Simply put, the basic concept is allowing resource users to trade rights with resources moving to those who value them more.

There is little to suggest that the same benefits could not apply in respect to the allocation and trading of water rights in NZ. Obviously, water raises some of the same issues which affect fisheries, for example, variation in quantities available (perhaps weather dependent). This means that rather than absolute allocations, it may also to necessary to provide for variations in water availability through a proportion of total allocation available approach, as now applies in respect to fisheries management.

It is important to note that whilst one ideal water transfer mechanism or set of mechanisms needs identifying to ensure certainty and consistency for water users and managers, different catchments have different flow characteristics, different hydrologies as well as different demands on water (e.g. consumptive versus non-consumptive uses). A sound water policy regime needs to balance the need for consistency and direction against allowing water management authorities to deal with specific problems or issues at the local level."

Part 2.1: Rebalancing freshwater management through multiple objectives

2.53 We support replacing the current National Policy Statement on Freshwater Management (NPS-FM) to better reflect the interests of all water users, and to ensure a more practical, balanced, and durable approach to freshwater management. The current NPS-FM operates under a single objective that establishes a rigid three-tier hierarchy: first, the health and well-being of water bodies and freshwater ecosystems; second, the health needs of people; third, the ability of people and communities to provide for their social, economic, and cultural well-being.

2.54 The 2020 version of the NPS-FM significantly prioritised environmental bottom lines with insufficient consideration of economic and social implications. While protecting freshwater health is essential, the current framework creates unintended consequences for communities, landowners, businesses, and infrastructure providers.

2.55 A replacement NPS-FM must better balance Te Mana o te Wai (TMotW) with the legitimate needs of urban, industrial, agricultural, and infrastructure water users. A more integrated and pragmatic framework is required - one that does not elevate environmental objectives above all others but instead recognises that economic and environmental wellbeing are interdependent.

2.56 The current NPS-FM has created uncertainty for councils and users alike. The prescriptive, one-size-fits-all requirements have proven difficult to apply consistently across diverse regions and catchments, leading to delays, legal disputes, and increased compliance costs. Businesses need regulatory clarity, proportionality, and flexibility to invest confidently in long-term water use, infrastructure, and land management decisions.

2.57 A revised NPS-FM should provide a clearer, more adaptive implementation pathway for councils, with scope for regional differentiation, innovation, and adaptive management.

2.58 BusinessNZ supports a revised NPS-FM that is:

- **Balanced** – recognising all values, including economic and social outcomes, alongside environmental goals.
- **Flexible** – enabling regional tailoring and catchment-specific approaches.
- **Practical** – ensuring requirements are implementable within local government capacity and timeframes.
- **Evidence-Based** – grounded in robust science and risk-based prioritisation.
- **Enabling** – supporting economic growth, water resilience, and innovation.

Part 2.2: Rebalancing Te Mana o te Wai

2.59 BusinessNZ notes that the Government is committed to rebalancing TMotW to better reflect the interests of all water users and to replace the National Policy Statement on Freshwater Management (NPS-FM) to better reflect the interests of all water users.

2.60 While we support the goal of improving water quality and sustainably managing freshwater resources, we have serious concerns about the ongoing inclusion of TMotW in the NPS-FM. In its current form, the concept introduces legal, operational, and interpretive uncertainty.

2.61 Water is a vital input into New Zealand's economy, supporting food production, energy generation, tourism, and everyday urban use. Effective freshwater policy must balance environmental goals with the needs of current and future generations across multiple domains — economic, social, cultural, and environmental. By requiring the prioritisation of the "health and well-being of water bodies and freshwater ecosystems" above all else — including human health and social or economic use — Te Mana o te Wai distorts this balance.

2.62 BusinessNZ notes that the Government proposes three options: removing the hierarchy while retaining principles and consultation requirements (Option 1), reverting to the 2017 narrative guidance approach (Option 2), or completely removing TMotW provisions (Option 3):

- Option 1: Remove hierarchy of obligations and clarify how TMotW applies: This option's retention of TMotW's six principles and consultation requirements would maintain significant compliance burdens while potentially increasing uncertainty. Without clear hierarchical guidance, consent applicants face unpredictable interpretations that could vary dramatically between regions and decision-makers. This would force businesses to navigate complex cultural assessments without knowing the weighting these will receive against economic considerations. The result is likely higher legal costs, longer processing times, and continued investment uncertainty that undermines NZ's competitive position.

- Option 2: Reinstate TMotW provisions from 2017: A return to the 2017 framework offers some regulatory relief by treating TMotW as guidance rather than binding obligation. This would restore councils' discretion to weigh economic benefits more equally against environmental considerations. However, this option still retains cultural consultation requirements and maintains freshwater as a special category requiring

additional assessment layers. For businesses seeking streamlined consenting processes, the 2017 approach represents only partial relief. Moreover, the transition costs of reverting regional plans would impose immediate compliance burdens on ratepayers and businesses alike, with uncertain outcomes given the policy instability this reversal would signal.

- Option 3: Remove TMotW provisions: By completely removing TMotW, this approach treats freshwater like other natural resources under standard RMA processes, eliminating layers of cultural assessment and consultation that add significant time and cost to consent processes. Option 3's approach would restore councils' ability to prioritise economic development where appropriate, enabling primary sector growth essential for NZ's export economy.

2.63 While TMotW expresses important cultural and environmental principles, we believe the way it is currently operationalised creates unacceptable uncertainty and cost. Therefore, on balance, Option 3 – removing those provisions – is preferable to achieve clarity and growth.

Other specific Concerns with the NPS-FM and NES-F

2.64 Page 28 of the NPS-FM River Policy states: The loss of river extent and values is avoided, unless the council is satisfied that:
(a) there is a functional need for the activity in that location; and
(b) the effects of the activity are managed by applying the effects management hierarchy.

2.65 "River" is defined broadly in the RMA,[1] meaning the River Policy applies to many consenting projects in New Zealand: **River** means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).

2.66 Given our geography and climate, New Zealand has extensive networks of rivers and streams. Significant infrastructure projects in New Zealand, such as a new quarry, roading project or landfill, will inevitably impact river "extent and values" to some degree.

[1] RMA, s 2(1).

Functional need vs operational need

2.67 While the River Policy provides an exception to applications that cannot avoid the loss of river "extent and values", this exception requires there to first be a "functional need" for the activity "in that location".

2.68 The core issue is that the River Policy does not refer to "operational need". This term is used in the National Planning Standards 2019: *Operational need* means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

2.69 The term "functional need" is also used in other parts of the NPS-FM and NES-F, including parts related to reclamation of a riverbed;[7] the construction or upgrade of specified infrastructure;[8] and quarrying and the extraction of minerals.[9]

2.70 We therefore propose the inclusion of the term "operational need" in the River Policy and clause 57 of the NES-F, alongside the term "functional need". The suggested changes are set out below. We believe this proposal, while modest, will provide a workable solution to reducing extensive delays, uncertainty and costs for applicants consenting nationally or regionally significant infrastructure in New Zealand.

Changes required

NPS-FM

2.71 Insert new definition to clause 1.4 of the NPS-FM:
Operational need means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

2.72 Amend Policy 3.24 of the NPS-FM:
The loss of river extent and values is avoided, unless the council is satisfied that:
(a) there is a functional or operational need for the activity in that location; and
(b) the effects of the activity are managed by applying the effects management hierarchy.

NES-F

2.73 Insert new definition to clause 3 of the NES-F:

Operational need means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

2.74 Amend clause 57 of the NES-F:
(2) A resource consent for a discretionary activity under this regulation must not be granted unless the consent authority has first—

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[7] Regulation 57 of the NES-F.
[8] Specified infrastructure is defined in the NPS-FM. This includes regionally significant infrastructure identified as such in regional policy statements or regional plans (eg facilities for the generation and/or transmission of electricity where it is supplied to the national electricity grid and/or the local distribution network are regionally significant infrastructure under the National Policy Statement for Renewable Electricity Generation 2011), infrastructure delivering a service operating a lifeline utility (eg an entity that provides a road network or rail network or service) and water storage infrastructure.
[9] For example, see clause 3.22(b), (d) and (e) of the NPS-FM and regulations 45(6), 45A(6), 46D(6) of the NES-F.

(a) satisfied itself that there is a functional or operational need for the reclamation of the riverbed in that location; and
(b) applied the effects management hierarchy.

2.75 In summary, including *operational need* alongside *functional need* makes the NPS-FM and NES-F more realistic and practical — ensuring that infrastructure and essential services can be delivered in ways that genuinely avoid, remedy, or mitigate effects on freshwater — without creating unintended barriers that potentially stop necessary development altogether.

Appendix One - Background information on BusinessNZ

BusinessNZ
THE VOICE OF BUSINESS

The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups EMA, Business Central, Business Canterbury, and Business South
- BusinessNZ policy and advocacy services
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium-sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and Business at OECD (BIAC).